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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,951

08/22/2003

Scott T. Wepfer

CPC-10003/22

8257

25006

7590

12/15/2006

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EXAMINER

SOROUSH, LAYLA

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

7#

Office Action Summary	Application No. 10/645,951	Applicant(s) WEPPER, SCOTT T.	
	Examiner Layla Soroush	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-21 and 24 is/are pending in the application.
- 4a) Of the above claim(s) 1-18, 22-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-21 + 24 is/are rejected.
- 7) ☒ Claim(s) 19-21 + 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Applicant's election without traverse of claims 19-21 and 24 in the reply filed on August 8, 2006 is acknowledged.

Claims 19-21 and 24 are pending. Claims 1-18, 22, and 23 are directed to nonelected matter and are therefore, withdrawn from further consideration.

Claim Objections

Claims 19-21 and 24 are objected to as being dependent upon a withdrawn claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mantelle (US Pat. No. 5,446,070) in view of Pomerantz (US Pat. No. 5,081,157).

Mantelle teaches a pharmaceutical formulation for topical administration of an anesthetic agent to ameliorate pain. Specifically, in Example 25 the ointment composition consists of the solvent propylene glycol, glycerin, lidocaine base and hydroxypropyl cellulose (column 20).

Mantelle fails to teach the volatile solvent as claimed.

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Pomerantz teaches a topical composition comprising a medicinal compound such as lidocaine, hydroxypropyl cellulose (HPC), and a volatile solvent.

Selective volatile solvents are used for their ability to dissolve HPC when the composition is applied in the amount necessary to form a protective film. The evaporation of the volatile solvent form films of HPC which are tough, resilient, and adhesive to body tissues and form a protective layer (column 4). The composition of Pomerantz is preferably in gel form (column 5, lines 15-19). Hence the limitation anhydrous gel form is met by the prior art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the non-volatile solvent of Mantelle with the volatile solvent of Pomerantz. The motivation to make such a substitution is because the volatile solvent evaporates from the composition to form a protective film. The film can be retained on the site where medicament need be added (for ex. the ulcer and surrounding mucosal tissue) for extended periods of time, upwards of several hours providing pain relief(column 5, lines 55-60). Therefore, a skilled artisan would have reasonable expectation of producing the same results as taught in the prior art.

The recitation of claim 21 wherein the pain is associated with the application of laser energy to the skin falls within the realms of the prior art.

Conclusion

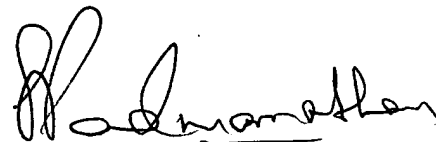
No claims allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER